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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re CHEROKEE S., et al., Persons
Coming Under the Juvenile Court Law.

B188649

(Los Angeles County
Super. Ct. No. CK56894)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

YOLANDA F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
D. Zeke Zeidler, Judge.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant
and Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County
Counsel, and Pamela S. Landeros, for Plaintiff and Respondent.

Yolanda F., the mother of two minor children declared dependents of the juvenile court (Mother) has appealed from a Welfare and Institutions Code section 366.26 order that terminated her parental rights as to the minors.¹ The minor children in the case are Cherokee S. and Cheyenne S. This is the second time the case has come before us. In 2005 we denied Mother's petition for extraordinary writ relief from an order terminating her reunifications services at the section 366.26, subdivision (e) six-month review hearing.

Mother contends in the instant appeal that the trial court abused its discretion when it refused her attorney's request to continue the section 366.26 hearing so that Mother could be present for it. Mother's attorney represented to the court that Mother was not at the scheduled hearing because she was on bed rest following the birth of another child. In refusing to grant the continuance, the court stated that if the attorney's offer of proof for why parental rights should not be terminated had met a threshold burden of proof such that a further hearing on the termination issue with testimony from Mother would be warranted, the court would have considered granting the continuance, but since that threshold was not met the continuance would be denied.

We find that the court did not abuse its discretion in denying Mother a continuance and we affirm the order terminating her parental rights.

¹ All references herein to statutes are to the Welfare and Institutions Code unless otherwise indicated.

BACKGROUND OF THE CASE²

1. Mother's Visitation and Case Plans Efforts After Her Reunification Services Were Terminated and the Section 366.26 Hearing Was Set

After the trial court terminated reunification services on June 6, 2005, it set the section 366.26 hearing for October 5. At that time, Cherokee was two years old and Cheyenne was one.

The reports from the Department of Children and Family Services (the Department) state that Mother did not visit the children from March 1 through June 23. On June 23 the Department social worker received a telephone call from Mother. Mother told the social worker she had not visited the minors because of her work schedule. Mother stated her day off is Friday and she works for a pest control company. The social worker told Mother to fax her work schedule and visitation could be arranged according to Mother's schedule. Mother faxed a letter from a man who owns a television repair business, not a pest control company.

The record reflects Mother visited the minors twice in July and then again on August 11, 17, 19 and 26. At that time visitation was at the foster family agency Wings of Refuge. After her August 26 visit, Mother complained she was only permitted to visit the children for an hour but the supervisor at the foster family agency told the

² Because our prior opinion in this case contains an extensive account of the factual and procedural events leading up to the trial court's termination of the parents' reunification services, we need not repeat that material here. Instead, we will set out the events taking place after reunification services were terminated. All of the events took place in 2005.

Department social worker that Mother only visited for an hour because she voluntarily left the visit early.

On August 19 Mother objected to the girls living with their foster mother because the foster mother lives in Compton and Mother opined that Compton is too dangerous for the minors. Mother stated she was six months pregnant.

In mid-September, the parents' monitored visitation site was changed from the foster family agency to a Department office in Compton. The change was made for the security of the children, the foster mother and the social workers, because Father made threats against the social workers and the foster mother, and Mother made threats against the foster mother. Thereafter, the parents never made arrangements to visit the children. They complained it was not safe to go to Compton and it was too far from their residences. On October 25 the social worker contacted Mother to schedule a visit for her with the girls but Mother stated she was on bed rest and was not able to visit them.

The foster mother was still indicating a desire to adopt the girls. Her home was their second placement, and they had lived with her since October 2004. She had already raised five girls as a single parent, and the Department reported she was capably meeting Cheyenne and Cherokee's needs. The minor girls call her "Mommy" and have developed an attachment to her. Cherokee was found to be globally developmentally delayed and is receiving services from Regional Center.

The Department social worker reported the foster mother had been "very patient and cooperative with [the social worker] and parents." In contrast, the worker reported

that Mother and the minors' father had been very uncooperative with the foster mother, the foster family agency and the social worker.

The Department's reports of October 5 and November 7, show the Department was having a difficult time contacting the parents because they had refused to provide the Department with current addresses. As of the November 7 report, the parents were reported to have no stable residence, they were not visiting the girls, and they had not complied with their case plans. Although Mother told the social worker on August 19 that the parents were participating in domestic violence and parenting classes, and individual counseling, and she would fax the name and telephone number of the service facility to the social worker, as of November 3 the worker had not received the information.

2. *Court Hearings After Termination of Reunification Services*

a. *The Original Section 366.26 Hearing*

As noted, the section 366.26 hearing was originally set for October 5. At that hearing, the court found that notice to the parents was not proper. Mother was not at the hearing. Her attorney indicated Mother was on a three-week bed rest and the attorney asserted the Department should arrange for visitation at Mother's home. The attorney also indicated Mother was dissatisfied with the visitation site being changed to the Department's office in Compton. The court stated the case was no longer in the reunification mode and it would not make any changes regarding visitation.

The court continued the section 366.26 hearing to December 19 for a contested hearing, with the contest to be “proceeded by an offer of proof from either parent who wants to contest it.”

b. *The November 7 RPP Hearing*

At the RPP (review of permanent plan) hearing on November 7, Mother’s attorney indicated Mother was on bed rest for at least six weeks and the attorney again requested that the Department arrange for a visit at the Mother’s home. The attorneys for the children and the Department objected to the children being transported to Mother’s residence, with the Department’s attorney noting that Mother has not disclosed to the Department where she lives, and the visits were moved to the Department’s office for security reasons because of the threats. The court observed that Mother had written to her own attorney that she would be entering the hospital on November 8 (apparently to deliver her baby), and the court stated that because the children were so very young and the case was not in reunification any longer, there would be no order for visitation at the hospital.

c. *The December 19 Section 366.26 Hearing*

According to information submitted to the court for the December 19 section 366.26 continued hearing, the adoption home study for the minor girls was completed and approved, and the Department’s adoption social worker was requesting that the parents’ parental rights be terminated. Mother’s attorney stated Mother was not at the hearing because she was still on bed rest.

The court stated Mother would present an offer of proof pursuant to *In re Tamika T.* regarding whether a contested section 366.26 hearing need be held on the issue of Mother's claim that the section 366.26, subdivision (c)(1)(A) exception to termination of parental rights applies in this case. That exception is applicable when there is a "compelling reason for determining that termination [of parental rights] would be detrimental to the child due to . . . the parents . . . hav[ing] maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (*Ibid.*) In *In re Tamika T.* (2002) 97 Cal.App.4th 1114, the court held that a parent's due process rights are not violated when the dependency court requires the parent to make an offer of proof on the parent's claim that one or more of the section 366.26, subdivision (c)(1) statutory exceptions to termination of parental rights apply to that case.

Mother's offer of proof consisted of her attorney reading from a visitation list that Mother faxed to her. The list is Mother's statement of all the visits she had with the minor children beginning in late October 2004. According to Mother's list, visitation was regular from October 2004 through April 2005, and according to her list, there were generally three visits a month during that period of time. Mother's list stated she had no visits in May or June, and she had visits in July and August, and none since August 26.³

³ This representation by Mother is vastly different from the visitation information set out in the Department's reports submitted to the court both prior to and after the June 6 six-month review hearing when reunification services were terminated. Prior to the June 6 hearing, the Department represented that Mother's visits were "sporadic" and she had "limited contact" with the children. A post-June 6 report states Mother had no contact with the minors from March 1 through June, and she visited twice in July and

Based on the information presented by Mother through her attorney, the trial court observed that Mother did not visit the children in May, June, September, October, November, and December of 2005, and the court found Mother did not make a sufficient offer of proof of regular and consistent contact with her children. The court noted it looked closely at the last six months because of the age of the minors.

At that point Mother's attorney stated that Mother wanted to be present for the hearing and had a right to be there, but she was bedridden because of the birth of her baby. The court responded that (1) it had continued the section 366.26 hearing for six weeks for Mother because of the report that she was bedridden,⁴ (2) a permanent plan for the children cannot be delayed indefinitely, and (3) if Mother's offer of proof had been successful, the court would have considered continuing the hearing so that Mother could give testimony on the nature of her relationship with the minors based upon their visitation and contact.

The court found the children are adoptable, terminated their parents' parental rights, and transferred custody to the Department for purposes of adoptive planning and placement. Thereafter, Mother filed this appeal.

four times in August, and thereafter she did not visit. Nor does Mother's list bear a resemblance to her own testimony at the June 6 hearing whereat she stated she saw the children an average of once a month.

⁴ The record shows the court continued the section 366.26 hearing from October 5 to December 19 because notice was not proper. Also, the home study was not yet approved.

CONTENTION ON APPEAL

Mother contends it was an abuse of discretion for the dependency court to deny her request for a continuance because the continuance was necessitated by her having recently given birth and being restricted to bed rest.

DISCUSSION

Section 352 “is the primary statute governing continuances in dependency cases.” (*Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187, 194.) Section 352 requires, among other things, that the person requesting the continuance show good cause, and that the continuance not be for any longer a period of time “shown to be necessary by the evidence presented at the hearing on the motion for the continuance.” (§ 352, subd. (a).) “Courts have interpreted this policy to be an express discouragement of continuances.” (*In re Karla C.* (2003) 113 Cal.App.4th 166, 179-180.) A denial of a continuance is reviewed under the abuse of discretion standard. (*Id.* at p. 180.) Here, Mother has not demonstrated an abuse of discretion.

To begin with, section 352 requires a presentation of *evidence* of good cause for the requested continuance, and Mother’s attorney presented no evidence showing good cause. There was only a second hand representation from the attorney that Mother was bed ridden. Presumably the attorney received such information from Mother herself since the attorney represented to the court at the prior two hearings that she often speaks with Mother. A review of our previous opinion shows that Mother is not a credible person. Further, by whose standard was Mother bedridden? There was no letter from a

doctor stating (1) that Mother was indeed confined to her bed, (2) the reason for the confinement, and (3) when she would be able to leave her bed and come to court.

Additionally, at the October 5 hearing Mother's attorney represented Mother would be on bed rest for three weeks. By the time of the December 19 hearing, some 10 weeks later, Mother was still representing that she was bedridden, and there was no indication that the end of her claimed confinement was in sight. Section 352 states that the requested continuance must not be for any longer a period of time "shown to be necessary by the evidence presented at the hearing." Here, there was no evidence of when the bed rest would end. Surely a presentation of good cause required more than her attorney's passing along Mother's own statement of her health. This failure to present good cause for a continuance justifies our finding the trial court did not abuse its discretion when it denied Mother a continuance.

Moreover, and as an alternative reason for rejecting Mother's assertion of abuse of discretion, the continuance was ultimately denied on the ground it was unnecessary because Mother's offer of proof failed. She was unable to demonstrate she had maintained regular visitation and contact with the minor children -- a threshold to claiming the (c)(1)(A) exception. Even assuming arguendo the correctness of Mother's representation to the court of the dates of her visits with the children, she admittedly had no visitation with them for six of the latest eight months, including the four most recent months. Further, despite Mother's assertions that it was not safe to visit the children in Compton and that she had been bedridden for months on end, there was no offer of proof that she had attempted to work around those claimed impediments. She presented

no evidence that she frequently telephoned the children at their foster home, and sent them cards and letters that the foster mother could show and read to them, so as to maintain contact with them.

For that reason, we reject Mother's contention that if she had been present when the court determined whether the threshold showing for the (c)(1)(A) exception had been met, "the court may have allowed more input that would have persuaded it to rule differently on the offer of proof [since Mother's c]ounsel indicated some 'red tape' problems that prevented visits that the court might have entertained had [Mother] been present." This "red tape" excuse was presented by Mother's attorney as an explanation for why Mother did not visit the minors *in May and June*. It did not explain why she failed to maintain contact with the children in some other fashion during all the months she failed to visit them. Moreover, Mother told the social worker she did not visit the children in May and June *because of her work schedule*.

DISPOSITION

The order from which Mother has appealed is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P.J.

ALDRICH, J.